

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cassandra Fendley	Team: Team # 6	CCRB Case #: 201404953	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/22/2014 4:30 PM, Wednesday, 05/14/2014	Location of Incident: Fresh Pond Road and 67th Avenue	Precinct: 104	18 Mo. SOL 10/22/2015	EO SOL 10/22/2015	
Date/Time CV Reported Wed, 05/21/2014 9:43 AM	CV Reported At: Precinct	How CV Reported: Mail	Date/Time Received at CCRB Wed, 05/21/2014 9:43 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DTS Anthony Wright	4255	935991	104 PCT
2. POM Jason Bianchini	01525	942997	104 PCT
3. POM Michael Cappellano	18910	950156	104 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Cappellano	Abuse: On April 22, 2014, PO Michael Cappellano searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Jason Bianchini	Abuse: On April 22, 2014, PO Jason Bianchini searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.POM Michael Cappellano	Abuse: On April 22, 2014, PO Michael Cappellano questioned § 87(2)(b)	
D.POM Jason Bianchini	Abuse: On April 22, 2014, PO Jason Bianchini questioned § 87(2)(b)	
E.POM Michael Cappellano	Abuse: On May 14, 2014, PO Michael Cappellano stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
F.POM Jason Bianchini	Abuse: On May 14, 2014, PO Jason Bianchini stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
G.DTS Anthony Wright	Abuse: On May 14, 2014, Det. Anthony Wright stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
H.POM Michael Cappellano	Discourtesy: On May 14, 2014, PO Michael Cappellano spoke rudely to § 87(2)(b)	
I.POM Jason Bianchini	Abuse: On May 14, 2014, PO Jason Bianchini searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	

Officer(s)	Allegation	Investigator Recommendation
J.DTS Anthony Wright	Abuse: On May 14, 2014, Det. Anthony Wright searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
K.POM Michael Cappellano	Abuse: On May 14, 2014, PO Michael Cappellano searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
L.POM Jason Bianchini	Abuse: On May 14, 2014, PO Jason Bianchini frisked § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		

Case Summary

On April 22, 2014, at approximately 3:30 p.m., § 87(2)(b) and § 87(2)(b) were driving from § 87(2)(b) to a liquor store located in the vicinity of 67th Avenue and Fresh Pond Road. Just after making a right turn onto 67th Avenue, § 87(2)(b)'s vehicle was pulled over for a traffic infraction by PO Michael Cappellano, PO Jason Bianchini and Det. Anthony Wright. § 87(2)(b) alleged that PO Cappellano and PO Bianchini searched his vehicle; while § 87(2)(b) alleged that only PO Bianchini searched the vehicle (**Allegations A and B**). § 87(2)(b) alleged that while he was at the back of the vehicle, first PO Bianchini and then PO Cappellano, asked if he had any guns or drugs in his vehicle (**Allegations C and D**). PO Cappellano then opened up a small pill container, which was located on § 87(2)(b)'s key chain, and found two pills each of Klonopin and Paxil. § 87(2)(b) did not have his prescription on him at the time of the incident so he was arrested for § 87(2)(b).

On May 14, 2014, at approximately 2:00 p.m., § 87(2)(b) and § 87(2)(b) were driving on the 80th Street overpass between Cooper Avenue and 78th Avenue in Queens when they were pulled over by PO Cappellano, PO Bianchini and Det. Wright (**Allegations E, F and G**). § 87(2)(b) alleged that PO Cappellano told him to get the “fuck” out of the car and to put his “fucking” phone away (**Allegation H**). Both § 87(2)(b) and § 87(2)(b) were told to exit the vehicle. While § 87(2)(b) alleged that PO Bianchini and Det. Wright searched the vehicle, § 87(2)(b) alleged that PO Cappellano and Det. Wright searched it (**Allegations I, J and K**). § 87(2)(b) also alleged that PO Bianchini frisked his front pants pockets (**Allegation L**). No contraband was found and no summonses or arrests resulted. § 87(4-b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Additional Civilians

On August 20, 2014, a call was placed to § 87(2)(b) and § 87(2)(b)'s aunt, who they listed as a witness for the May 14, 2014, incident. § 87(2)(b) confirmed that both she and her daughter, § 87(2)(b) drove by § 87(2)(b) and § 87(2)(b) on May 14, 2014, and saw officers standing around them at the back of their vehicle. § 87(2)(b) said that neither of them saw anything else occur and said that they just continued driving and did not stop. Neither one was willing to provide any additional information and requested not to be a part of the complaint. § 87(2)(b)

§ 87(2)(b)

Arrest and Civil Proceedings

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] .
- § 87(2)(b) and § 87(2)(b) have not filed a notice of claim with the City of New York, with regard to the incident, as of October 30, 2014, which is six months past the 90-day filing expiration (encl. 7B).

CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) and § 87(2)(b) (encl. 1 E-G).
- PO Cappellano has been a member of the service for three years and this is the first complaint filed against him (encl. 1 A).
- PO Bianchini has been a member of the service for seven years and there are no substantiated CCRB allegations against him (encl. 1 B).

- Det. Wright has been a member of the service for ten years. In CCRB case 201305640, allegations of a stop and a vehicle search were substantiated against him and he received command discipline. In CCRB case 201311116, an allegation of a vehicle search was substantiated against him and the Board decided to pursue charges, but the case is still pending (encl. 1 C-D).

Investigative Findings and Recommendations

Allegations Not Pleaded

§ 87(2)(g)

§ 87(2)(b) alleged that on May 14, 2014, Det. Wright asked § 87(2)(b) if he had any pills or drugs. However, § 87(2)(b) did not allege that, § 87(2)(g).

Identification of Subject Officers

PO Cappellano, PO Bianchini and Det. Wright all acknowledged interacting with § 87(2)(b) and § 87(2)(b) on April 22, 2014. § 87(2)(g)

PO Cappellano and PO Bianchini acknowledged stopping the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants at some point around May 14, 2014. Det. Wright did not recall the incident, § 87(2)(g) he confirmed he was working with PO Cappellano on May 14, 2014, § 87(2)(g)

Recommendations

Allegation A – Abuse of Authority: On April 22, 2014, PO Michael Cappellano searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation B – Abuse of Authority: On April 22, 2014, PO Jason Bianchini searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) alleged that PO Cappellano searched the vehicle before his pills were found (encl. 3 C-I). § 87(2)(b) alleged that at some point during the incident PO Bianchini searched the vehicle (encl. 3 J-N).

PO Cappellano and Det. Wright both denied the vehicle search occurring at all. PO Bianchini said that the vehicle was probably searched, but he was not positive. He added that the vehicle would have been searched after the pills were found.

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Abuse of Authority: On April 22, 2014, PO Michael Cappellano questioned

§ 87(2)(b)

Allegation D – Abuse of Authority: On April 22, 2014, PO Jason Bianchini questioned

§ 87(2)(b)

§ 87(2)(b) alleged that PO Cappellano and PO Bianchini asked him if there were any “guns or drugs” in the vehicle.

Both PO Cappellano and PO Bianchini denied asking about guns or drugs specifically. However, PO Cappellano confirmed that he asked § 87(2)(b) if there was anything in the vehicle, upon his approach of it. PO Cappellano recognized § 87(2)(b) from an incident in which he fled from officers and an incident in which he was charged with having a loaded firearm. Because of those reasons, PO Cappellano asked § 87(2)(b) if he had anything in the vehicle. Other than the previous incidents, PO Cappellano said that he had no reason to believe that § 87(2)(b) had anything on him (encl. 4 F).

PO Bianchini also confirmed that § 87(2)(b) was asked if there was anything in the vehicle. While he thought that PO Cappellano asked the question, he was not positive and thought it could have been him. The question is typically asked just to see if there are any weapons that could harm the officers. However, at that point, PO Bianchini said that he had no specific reason why the officers thought that § 87(2)(b) had a weapon in his vehicle (encl. 4 O).

People v. Hollman states that an officer cannot ask accusatory questions without founded suspicion of criminality, 79 N.Y.2d 181 (1992) (encl. A-H).

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation E – Abuse of Authority: On May 14, 2014, PO Michael Cappellano stopped the car in which § 87(2)(b) **and** § 87(2)(b) **were occupants.**

Allegation F – Abuse of Authority: On May 14, 2014, PO Jason Bianchini stopped the car in which § 87(2)(b) **and** § 87(2)(b) **were occupants.**

Allegation G – Abuse of Authority: On May 14, 2014, Det. Anthony Wright stopped the car in which § 87(2)(b) **and** § 87(2)(b) **were occupants.**

Both § 87(2)(b) and § 87(2)(b) alleged that PO Cappellano, PO Bianchini and Det. Wright stopped § 87(2)(b)'s vehicle in the vicinity of 80th Street and Cooper Avenue, for no reason (encl. 3 O-S). § 87(2)(b) confirmed that as she drove past § 87(2)(b) and § 87(2)(b) on 80th Street, she saw that they had been stopped by officers.

PO Cappellano confirmed that he had stopped a vehicle in which § 87(2)(b) and § 87(2)(b) were occupants in the vicinity of 80th Street about a few weeks after the April 22, 2014, incident. However, he was not able to confirm the exact date of occurrence. Regardless, he confirmed that he, PO Bianchini and Det. Wright stopped the vehicle for a traffic infraction, of which he could not recall at the time of his CCRB interview. PO Bianchini also confirmed that the stop occurred, but he too could not confirm the date. PO Bianchini also said that the reason for the stop was a traffic infraction. Det. Wright denied the stop occurring at all. No summonses resulted so there was nothing to document the incident.

§ 87(2)(b) PO Cappellano and PO Bianchini were all consistent in the fact that the stop occurred. § 87(2)(g)

§ 87(2)(b) While § 87(2)(b) and § 87(2)(b) were consistent in the fact that no traffic violations were committed, there is nothing remarkable about § 87(2)(b)s

vehicle which could have caused the stop or led the officers to recognize it as § 87(2)(b)s vehicle.

§ 87(2)(g)
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Allegation H – Discourtesy: On May 14, 2014, PO Michael Cappellano spoke rudely to

§ 87(2)(b)

Allegation L – Abuse of Authority: On May 14, 2014, PO Jason Bianchini frisked § 87(2)(b)

During his CCRB statement, § 87(2)(b) alleged that PO Cappellano told him to get the “fuck” out of the vehicle. § 87(2)(b) also alleged that while he was at the back of his vehicle, holding his cell phone, PO Cappellano told him to put his “fucking” telephone away. However, during his prior CCRB telephone statements, § 87(2)(b) did not allege profanities being used (encl. 3 B). Further, § 87(2)(b) did not allege any profanities occurring.

§ 87(2)(b) alleged that while he was at the back of the vehicle, PO Bianchini patted down his front pants pockets. § 87(2)(b) did not allege this occurring.

PO Cappellano, PO Bianchini and Det. Wright all denied that profanities were used and that § 87(2)(b) was frisked.

§ 87(2)(g)
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Allegation I – Abuse of Authority: On May 14, 2014, PO Jason Bianchini searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation J – Abuse of Authority: On May 14, 2014, Det. Anthony Wright searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation K – Abuse of Authority: On May 14, 2014, PO Michael Cappellano searched the car in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) alleged that PO Bianchini and Det. Wright searched his vehicle. § 87(2)(b) on the other hand, alleged that PO Cappellano and Det. Wright searched the vehicle. PO Cappellano, PO Bianchini and Det. Wright all deny a vehicle search taking place.

§ 87(2)(g)
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§ 87(2)(g), § 87(4-b)

Pod: 5

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date